

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

GENE LEMAY BARRIS,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

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No. 1:18-CV-00077 JAR

MEMORANDUM AND ORDER

Before the Court is Movant’s “addendum” to his 28 U.S.C. § 2255 Motion to Vacate, Set Aside, or Correct Sentence. (Doc. 7.) The Court will construe Movant’s addendum as a Motion for Leave to Amend and will grant it with instructions to file a second amended § 2255 Motion.

Procedural Background

Movant filed a hand-written, two-page § 2255 Motion to Vacate on April 2, 2018, in which he raised a number of instances of ineffective assistance of trial counsel. (Doc. 1.) The Court ordered Movant to file an amended motion on a court-provided form. (Doc. 2.) Movant did so on March 7, 2018. (Doc. 5.) On July 2, 2018, Movant filed this “addendum,” in which he sought to supplement his motion with new instances of ineffective assistance. (Doc. 7.) The Court construes Movant’s addendum as a request to amend his 2255 Motion to Vacate.

When a party has already amended his pleadings once, he may not do so again without obtaining either the other party’s consent or the court’s leave. Fed. R. Civ. P. 15(a)(2), 28 U.S.C. § 2244. Rule 15 states that leave should freely be given when justice so requires. “[A]mendments seeking to add claims are to be granted more freely than amendments adding

parties.” *Union Pacific R. Co. v. Nevada Power Co.*, 950 F.2d 1429, 1432 (9th Cir. 1991). The Court notes that Respondent has not yet answered Movant’s amended motion—having sought and obtained an extension of time to do so—and concludes that allowing Movant to file a second amended motion would be in the interests of justice.


Plaintiff shall have twenty-one (21) days from the date of this Order to file his second amended Motion to Vacate. Plaintiff is warned that the filing of the second amended motion **completely replaces** the original and amended motions, and claims that are not re-alleged are deemed abandoned. *E.g., In re Wireless Telephone Federal Cost Recovery Fees Litigation*, 396 F.3d 922, 928 (8th Cir. 2005). If plaintiff fails to file his second amended motion within twenty-one (21) days, the Court may dismiss this action without prejudice.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff’s construed Motion for Leave to Amend (Doc. 7), is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff shall file a second amended motion, in accordance with the instructions set forth above, **no later than twenty-one (21) days from the date of this Order.**

Dated this 17th day of July, 2018.



JOHN A. ROSS
UNITED STATES DISTRICT JUDGE